United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

FOR MR. JUSTICE VAN ORSDEL

TRANSCRIPT OF RECORD

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1925

259

No. 4377.

LODUTH E. LA RAW, PLAINTIFF IN ERROR,

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, A CORPORATION.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 16, 1925.

PRINTED NOVEMBER 6, 1925.

Illegible 4/26

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1925.

No. 4377.

LODUTH E. LA RAW, PLAINTIFF IN ERROR,

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, A CORPORATION, DEFENDANT IN ERROR.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 26, 1925.

Court of Appeals of the District of Columbia.

No. 4377.

LODUTH E. LA RAW, Plaintiff in Error,

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a Corporation.

1 In the Municipal Court of the District of Columbia.

No. A-2641.

LODUTH E. LA RAW, Plaintiff,

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a Corporation, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Municipal Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:

2 *Amended Declaration by Leave of Court First Had and Obtained.*

Filed July 23, 1925.

* * * * * * *

The plaintiff, Loduth E. La Raw, sues the defendant, the Prudential Insurance Company of America, a corporation incorporated under and existing by virtue of the laws of the State of New Jersey and doing business under the laws of and in the District of Columbia, for that, heretofore, to wit, on the 3rd day of August, 1908, and the fourteenth day of September, 1908, respectively, at the City of Washington, District of Columbia, said defendant made its certain policies of insurance, photostatic copies of which are attached hereto and made a part hereof as Plaintiff's Exhibits "A" and "B," and delivered the same to Frank B. Egan, then living.

That thereupon the said Frank B. Egan was duly and properly admitted to membership in said organization, and in consideration of said membership, representations and warranties made to it by the application for said membership and the sums of 15 cents and 25 cents weekly premiums paid respectively on said policies by Frank B. Egan and by Loduth E. La Raw, the present holder of these policies, the said defendant did promise and agree to pay or cause to be paid to the executor, or the administrator of the insured, or to any relative by blood or connection by marriage of the insured immediately after satisfactory proof of the death of the said Frank B. Egan is received at the office of said defendant, the sums of $225 and $375, respectively, as set out in the aforesaid policies.

3 THE PRUDENTIAL INSURANCE COMPANY OF AMERICA.

24,915,903.

EXHIBIT "A."

Second Insurance.

Hereby Insures the life of the person herein designated as the Insured, and agrees to pay the benefit stipulated in the following Schedule, subject to the Conditions, Privileges and Provisions contained on the second, third and fourth pages hereof, which are hereby made part of this contract.

Schedule.

Name of insured	Age next birthday	Benefit if insured is ten years of age or over next birthday	Weekly premium
Frank B. Egan.....	28	$375	25 Cents

If the Insured shall die within six months from the date hereof, one-half the above benefit will be paid. After six months from its date the Policy will be in force for the full benefit.

* * * * * * *

4 & 5 Conditions.

This insurance is granted in consideration of the weekly premium hereinbefore stated, which shall be paid to the Company or to its authorized representative on or before every Monday during the continuance of this contract, until the seventy-fifth birthday of the Insured.

The amount of benefit provided in the Schedule on the first page hereof shall be paid by the Company at its Home Office in the City

of Newark, New Jersey, unto the executors or administrators of the Insured, unless settlement shall be made as provided in article 2d under the head of "Provisions," below, immediately upon receipt of due proof of the death of the Insured during the continuance of this policy.

* * * * * * *

Provisions.

* * * * * * *

6-10 2nd. Facility of Payment.—The Company may make any payment provided for in this Policy to relative by blood or connection by marriage of the Insured, or to any other person appearing to said Company to be equitably entitled to the same by reason of having incurred expense on behalf of the Insured, for his or her burial or, if the Insured be more than fifteen years of age at the date of this Policy, for any other purpose, and the production by the Company of a receipt signed by any or either of said persons or of other sufficient proof of such payment to any or either of them shall be conclusive evidence that such Benefits have been paid to the person or persons entitled thereto, and that all claims under this Policy have been fully satisfied.

* * * * * * *

7th. Modification, etc.—No condition, provision or privilege of this Policy can be waived or modified in any case except by an endorsement hereon signed by the President, one of the Vice-Presidents, the Secretary, one of the Assistant Secretaries, the Actuary, the Associate Actuary or one of the Assistant Actuaries. No modification or change shall be made in this Policy except such as is in accordance with the law of the State in which the same is issued. No agent has power in behalf of the Company to make or modify this or any other contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the Company by making any promise, or making or receiving any representation or information.

* * * * * * *

11th. Entire Contract Contained in This Policy.—This Policy contains the entire contract between the parties hereto, and all statements made by the Insured shall in the absence of fraud be deemed representations and not warranties, and no such statement shall avoid the Policy or be used as a defence to a claim thereunder.

* * * * * * *

And the plaintiff further avers that on the 30th day of April, 1918, the said Frank B. Egan, the insured named in the aforesaid policies of insurance, disappeared from his home in the City
11 of Washington, District of Columbia, and left his domicile without any known intention of changing the same, and has not returned, and has never been heard of or from, from the time of

his so leaving. Plaintiff further avers that diligent search and inquiry, both public and private, has been made for him and no trace or word of him has ever been found. Plaintiff further avers that affidavits in support of the above statement are now in the possession of the said defendant company, having been submitted to said defendant in filing Claimant's Affidavit with said Company by this plaintiff.

Plaintiff further avers that all weekly premiums due on the said policies of insurance have been paid, and that she, the said plaintiff, is the only claimant for the sums due under these policies and that she is the person most equitably entitled to these sums in view of the fact that she is a relative by marriage and the only person, now living, who has incurred expense in keeping up the payment of prmiums on these policies.

Plaintiff further avers that after the disappearance of the insured, one C. H. Schaffer, an agent of the defendant company, who dealt with the insured and this plaintiff, and who collected the premiums from this plaintiff, told the said plaintiff, "never to allow the policies to become delinquent, to always keep the premiums paid up to date, that the person holding the policies and paying the premiums would be entitled to, and the company would pay, the insurance, after the seven year period had elapsed, if the persons so entitled would make claim for the amount of the insurance."

And the plaintiff further avers that in view of the continued absence, without word or letter, from the insured, Frank B. Egan, over a period of more than seven years, the said insured is presumed to be and is dead. Section 252 of the Code of Laws for the District of Columbia.

12 And the plaintiff further avers that she, the plaintiff, has requested the said Company to pay the amounts due under the policies, and has duly filed a claim for said amounts, that the said Company has not paid the benefits due under the policies, that the said Company has refused to pay the said amounts now due, and has rejected and refused the claim made for the sums due under the policies by this plaintiff, to the damage of the plaintiff in the sum of six hundred dollars, with interest from April 30, 1925.

And plaintiff further avers that she, the plaintiff, is a step-daughter of the insured, Frank B. Egan, and that she has paid the premiums due on aforesaid policies of insurance, for, to wit, the last six years.

Wherefore, the plaintiff is damaged in the sum of six hundred dollars, with interest from April 30, 1925, besides costs of this suit.

G. B. SPRINGSTON,
Attorney for Plaintiff.

Particulars of Demand.

Filed July 23, 1925.

* * * * * * *

Breach of contract of Insurance.

$600, with interest from April 30, 1925, as per Exhibits "A" and "B" in the declaration set forth.

Amended Affidavit of Merit.

Filed July 23, 1925.

* * * * * * *

DISTRICT OF COLUMBIA, *ss:*

Loduth E. La Raw, being first duly sworn, deposes and says that she is the plaintiff in the above-entitled cause of action; that she holds policies of insurance, photostatic copies of which are
13 attached to the declaration, issued on the 3rd day of August, 1908 and the 14th day of September, 1908, by the defendant corporation on the life of Frank B. Egan, that application for said policies of insurance was made in the City of Washington, District of Columbia, at the local office of the Prudential Insurance Company of America, and was duly forwarded to the Home Office in the City of Newark, State of New Jersey, that the certificates on which this suit is founded were forwarded by the Home Office to the local office in the City of Washington, District of Columbia, and delivered to said Frank B. Egan in said last named city, the certificates being attached in photostat to the declaration. That the insured, Frank B. Egan, upon whose life the said policies were issued, disappeared and left his domicile without any known intention of changing the same and has not returned or been heard from since April 30, 1918, that the Police were duly notified, and every effort was made, thru the Police Department and by this deponent to locate said Frank B. Egan and to determine his whereabouts, and to learn if possible if he was dead or alive, but that since the said day of his disappearance as aforesaid no information of any kind has been obtained and neither deponent nor any other person as far as deponent knows has ever heard directly or indirectly from him or obtained any information as to his whereabouts and as to whether he is dead or alive. This deponent further says that she is the only claimant for the said sums due under these policies and that she is the person most equitably entitled to these sums as set out in the declaration and that the agent and representative of the company, to whom she paid her premiums, one C. H. Schaffer, an agent of the defendant company, told her that if she kept up the premiums and did not allow the policies to lapse the Company would
14 pay her the insurance money after the insured had been unheard of or from for seven years if she would make claim. Deponent further says that she made claim and was refused by letter dated June 9, 1925, a true copy of which is attached hereto. Deponent says that payment of all premiums has been made and accepted by defendant corporation with full knowledge of all facts, that the policies are now in full force and effect and that since the institution of this suit the company has accepted payment of the premiums due under these policies from this plaintiff. Deponent has neither seen nor heard of the said Frank B. Egan since April 30, 1918, that due notice was given the defendant corporation of the disappearance

and death of insured, Frank B. Egan, and demand made upon them for the amount due on said policies, to wit, $600, but payment refused by letter from defendant corporation as shown, a true copy being attached hereto and made a part of this affidavit, and there is now justly due and owing to the deponent, as the holder of the policies of insurance, under said policies, the sum of $600, with interest from the 30th day of April, 1925, exclusive of all set-offs and just grounds of defense.

LODUTH E. LA RAW.

Subscribed and sworn to before me this 23rd day of July, 1925.
[NOTARIAL SEAL.] CAMPBELL HOWARD,
Notary Public.

Demurrer to Amended Declaration.

Filed August 5, 1925.

* * * * * * *

The defendant says that the Declaration filed herein is bad in substance.

MINOR, GATLEY & ROWLAND,
Attorneys for Defendant.

15 *Letter Attached to Affidavit.*

Edward D. Duffield, President.

The Prudential Insurance Company of America.

Home Office, Newark, N. J.

Telephone Connection

Founded by John E. Dryden. The Prudential Has the Strength of Gibraltar. Pioneer of Industrial Insurance in America.

John F. Dryden, Superintendent.

New Commercial National Bank Building, Fourteenth and G Streets, Washington, D. C.

S. C.
In re Frank B. Egan.
Name and Title: ——.
Referring to: ——.

June 9, 1925.

Mr. G. B. Springston,
Appeals Bldg.,
Washington, D. C.

DEAR SIR:

With further reference to the above matter, our Home Office Writes us as follows:

"There has been no information submitted that would warrant us in making an investigation. The Claimant in this case is a step-daughter and the fact that she has not heard from the insured since 1918 is not sufficient reason for our assuming that Death has occurred.

"Form #7089 submitted shows that the insured had not been living with his wife for a year previous to his disappearance. The claimant is unable to give the names and addresses of any of the insured's blood relatives, who in all probability could furnish valuable information, unless proof of death is furnished, during the continuance of the policy, we consider the matter closed.

"The insured in this case is a young man 44 years old, and is in all probability still alive."

Regretting to be unable to do anything further in the matter, I remain,

Very truly yours,

JOHN F. DRYDEN,
S. C.,
Superintendent.

16 NOTE.—The matters of law intended to be argued in support of the foregoing demurrer are: (1) The plaintiff, in and by her said declaration does not show any right to the proceeds of the policies of insurance sued upon. (2) In and by her said declaration it appears that unless the defendant company should exercise the right given it in and by provision 2 of said policies, known as the "Facility of Payment" clause, the proceeds of said policies are payable to the executor or administrator of insured upon receipt of due proof of the death of the insured and not to the plaintiff. (3) The plaintiff does not show in and by her said declaration that she has furnished the defendant due proof, or any proof, of the death of the insured.

Minute Entry.

Entered August 7, 1925, Minutes 17, Page 220.

* * * * * * *

Upon consideration of defendant's demurrer to plaintiff's declaration in the above entitled cause filed herein, it is ordered that said demurrer be, and the same is hereby sustained and suit dismissed. Exceptions noted.

Order.

Filed September 15, 1925.

* * * * * * *

Upon hearing the demurrer to the amended declaration filed herein, it is considered that said demurrer be and hereby is sustained.

Wherefore, the plaintiff announces that she will stand upon her Amended Declaration, Particulars of Demand, and Amended Affidavit of Merit, as corrected, therefore it is considered, that the plaintiff take nothing by her suit and that the defendant go thereof without day and recover against the plaintiff their costs of
17 suit to be taxed by the clerk and have execution thereof.

By the Court nunc pro tunc September 15, 1925.

MARY O'TOOLE,
Justice.

Assignment of Errors.

Filed September 15, 1925.

* * * * * * *

The plaintiff assigns as reversible errors the following actions of the Trial Court:

1. The order sustaining the demurrer to the plaintiff's amended declaration, particulars of demand, and amended affidavit of merit.
2. Dismissing the plaintiff's amended declaration, particulars of demand and amended affidavit of merit.

JOHN PAUL EARNEST,
GEORGE BAILLIE SPRINGSTON,
Attorneys for Plaintiff.

18 Filed August 25, 1925. Municipal Court, District of Columbia.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Mary O'Toole, Judge of the Municipal Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Municipal Court, before you, between Loduth E. La Raw, plaintiff, and The Prudential Insurance Company of America, defendant, No. A 2641, a manifest error hath happened, to the great damage of the said plaintiff, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 20 days from the settling of the bill of exceptions, or within such additional time after the expiration of the 20 days as the court below or a judge thereof for sufficient cause shall allow; that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further

to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable George E. Martin, Chief Justice of the said Court of Appeals, the 25th day of August, in the year of our Lord one thousand nine hundred and twenty-five.

[Seal of Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia,
By MONCURE BURKE,
Assistant Clerk.

Allowed by
GEORGE E. MARTIN,
Chief Justice of the Court of
Appeals of the District of Columbia.

19 Filed Oct. 5, 1925. Municipal Court, District of Columbia.

In the Municipal Court of the District of Columbia.

No. A 2641.

LODUTH E. LA RAW, 1104 M Street N. W., Plaintiff,

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, 14th and G Streets N. W., a Corporation, Defendant.

Bill of Exceptions.

Be it remembered that this cause came on for trial before Judge Mary O'Toole, sitting without a jury, whereupon the defendant filed a demurrer to the amended declaration, of the plaintiff, which demurrer, after argument of counsel for both the plaintiff and defendant, the court sustained on the 7th day of August, 1925, to which ruling of the court in sustaining said demurrer the plaintiff then and there objected and excepted and that thereafter, to wit, on September 15, 1925, nunc pro tunc, the plaintiff electing to stand on said amended declaration, the court passed an order dismissing said amended declaration, adjudging costs against the plaintiff to which ruling likewise the plaintiff objected and excepted and gave notice of her intention to apply to the Court of Appeals for a Writ of Error.

Be it further remembered that each of the several and separate exceptions taken by the plaintiff to the rulings of the court were then and there separately and severally taken in open court and counsel for the plaintiff then and there prayed the court to sign this Bill of Exceptions to have the same force and effect as if said Exceptions were separately and severally set forth in a separate Bill of Exceptions, and at the request of counsel for the plaintiff the same is ac-

cordingly signed and made a part of the record of this cause now for then, this 5th day of October, 1925.

MARY O'TOOLE,
Judge of the Municipal Court of the District of Columbia.

Copy of foregoing received Sept. 15, 1925.
MINOR, GATLEY & ROWLAND,
Attys. for Defendant.

20 [Endorsed:] No. A 2641. Loduth E. La Raw, 1104 M Street, N. W., Plaintiff, vs. The Prudential Insurance Company of America, 14th and G Streets, N. W., a corporation, Defendant. Bill of Exceptions. Copy to be filed in the Court of Appeals. John Paul Earnest, George Baillie Springston, Attys. for Plaintiff. Filed Oct. 5, 1925. Municipal Court, District of Columbia.

21 *Docket Entries.*

* * * * * * *

1925.		Dep's.	Costs. P't'f's.	Costs. Def's.
	Deposit toward costs by plaintiff	$10.00	....	....
June 23.	Declaration, particulars of demand, affidavit of merit, and exhibit filed	.25	$1.00	....
June 23.	Summons and copy issued, returnable July 7-10	....	1.25	....
June 23.	Docketing and indexing	....	2.00	....
June 26.	Summons returned personal service—S. P. Markel	....	.25	....
July 7.	Demurrer filed by defendant	....	.25	....
July 7.	Continued to July 16—10 P.	....	.25	....
July 16.	Defendant's demurrer to plaintiff's declaration sustained. Plaintiff granted leave to plead over. M. 16, p. 463	....	.50	....
July 20.	Plaintiff's oral motion to extend time 10 days within which to file amended declaration granted. M. 16, p. 475	....	....	....
July 23.	Amended declaration, particulars of demand, and amended affidavit filed by plaintiff	....	.25	....
Aug. 5.	Demurrer to amended declaration filed	....	.25	....
Aug. 5.	Set for hearing August 7, 10 A. M. per order filed	....	.25	....
Aug. 7.	Demurrer to declaration sustained. M. 17, p. 220	....	.50	....

1925.		Dep's.	Costs. P't'f's.	Def's.
Aug. 25.	Writ of error from Court of Appeals received and notice sent to defendant in error	....	....	....
Aug. 26.	Designation of record filed by plaintiff	....	.25	....
Aug. 31.	On Court's own motion time extended to 10/1/25 to submit			
22	bill of exceptions. M. 17, p. 220	....	....	....
Sept. 15.	Assignment of errors filed by plaintiff	....	.25	....
Sept. 15.	Order of Court filed.....	....	.25	....
Sept. 18.	Set for settling bill of exceptions September 25-10 plaintiff's order	....	.25	....
Sept. 25.	Defendant's oral motion to extend time to October 5, 1925, to submit bill of exceptions granted. M. 17, p. 276.....	....	....	....
Oct 5.	Bill of exceptions submitted....	....	....	....
Oct. 5.	Bill of exceptions submitted, signed and ordered of record nunc pro tunc.....	....	....	....
Oct 5.	Designation of record filed.....	....	.25	....

Designation of Record.

Filed October 5, 1925.

* * * * * * *

The clerk will prepare the record on appeal in the above entitled cause to include the following:

1. Amended declaration, Particulars of Demand, Affidavit of merit,
2. Demurrer,
3. Ruling of court on demurrer,
4. Order dismissing amended declaration,
5. Assignment of errors,
6. The Writ of error,
7. Bill of exceptions,
8. Docket entries,
9. This designation.

EARNEST AND SPRINGSTON,
Attorneys for Plaintiff.

23 Municipal Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Blanche Neff, Clerk of the Municipal Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 12, both inclusive, to be a true and correct transcript of the record, according to direction of counsel herein filed, copy of which is made part of this transcript, in cause, At Law No. A-2641, wherein Loduth E. La Raw is plaintiff, and The Prudential Insurance Company of America, a corporation, is defendant, as the same that remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 13th day of October, 1925.

[Seal Municipal Court, District of Columbia.]

BLANCHE NEFF.
Clerk.

24 In the Court of Appeals of the District of Columbia.

Original, No. 4377.

LODUTH E. LA RAW, Petitioner,

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Respondent.

Appellant's Designation of Parts of Record to be Printed.

The Clerk in the printing of the record on appeal in this court in the above-entitled case is hereby directed to omit therefrom all of page 3; all of page 4 except the first six lines; all of page 5; on page 6 the first three lines and lines 10 to 27 inclusive and lines 33 to the end of the page; and all of pages 7, 8, 9 and 10, the same being immaterial to the hearing of the case on its merits.

LODUTH E. LA RAW,
Petitioner,
By JOHN PAUL EARNEST,
GEORGE B. SPRINGSTON,
Plaintiff's Attorneys.

Service accepted this 19th day of October, 1925.
MINOR, GATLEY & ROWLAND,
Attys. for Defendant.

25 [Endorsed:] Original, No. 4377. Loduth E. La Raw, Petitioner, vs. The Prudential Insurance Company of America,

Respondent. Appellant's Designation of Parts of Record to be printed. John Paul Earnest, George B. Springston, Attys. for Appellant. Court of Appeals, District of Columbia. Filed Oct. 20, 1925. Henry W. Hodges, clerk.

26 In the Court of Appeals of the District of Columbia.

No. 4377.

LODUTH E. LA RAW

vs.

PRUDENTIAL INSURANCE COMPANY OF AMERICA, Respondent.

Now comes the respondent in the above cause, by Messrs. Minor, Gatley & Rowland, its attorneys, in opposition to appellant's designation for printing, and directs the Clerk to *include* in the printed record the following parts which appellant designated for exclusion, which parts are considered by respondent as material to the determination of the questions raised on appeal, namely:

1. Include page three from the top of the page to the line in the middle of the page reading "Table of benefits if insured is less than ten years of age next birthday."
2. Page 6. Include provision Eleventh, in addition to provisions Second and Seventh, already designated by appellant.

MINOR, GATLEY & ROWLAND,
Attorneys for Respondent.

GEORGE B. SPRINGSTON,
Atty. for Appellants.

27 [Endorsed:] No. 4377. Loduth E. La Raw vs. Prudential Insurance Company of America, Respondent. Additional Designation of Record to be Printed. Minor, Gatley & Rowland, Attorneys at Law, Colorado Building, Washington, D. C. Court of Appeals, District of Columbia. Filed Oct. 22, 1925. Henry W. Hodges, clerk.

Endorsed on cover: District of Columbia Municipal Court. No. 4377. Loduth E. La Raw, plaintiff in error, vs. The Prudential Insurance Company of America, a corporation. Court of Appeals, District of Columbia. Filed Oct. 16, 1925. Henry W. Hodges, clerk.